
In the Matter of the Compensation of
ROLLAN A. CUMMINS, Claimant
Own Motion No. 04-0061M
OWN MOTION ORDER
Malagon Moore et al, Claimant Attorneys
Michael Whitty, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Kasubhai and Langer.

The SAIF Corporation submitted claimant's request for claim reopening. Claimant's aggravation rights have expired. On February 10, 2004, SAIF denied claimant's medical services claim for his current condition on which he filed a request for hearing. (WCB Case No. 04-01248). On March 24, 2004, we deferred action on this matter to await resolution of the issues pending before the Hearings Division.

On June 9, 2004, as reconsidered on September 3, 2004, Administrative Law Judge (ALJ) Spangler upheld SAIF's February 10, 2004 medical services denial. That order was not appealed, and has become final by operation of law. Consequently, claimant's medical services claim for his accepted condition remains in denied status.

Under such circumstances, we are unable to authorize the reopening of the claim for a worsening of his previously accepted condition under ORS 656.278(1)(a) (2001). *James J. Kemp*, 54 Van Natta 491 (2002). Accordingly, the request for claim reopening for a "worsening" of his previously accepted condition is denied.

Also on September 3, 2004, ALJ Spangler issued a Proposed and Final Own Motion Order, finding that the "post-aggravation rights" new medical condition was not compensable concerning claimant's 1998 injury claim.¹ That order was not timely appealed, and has become final by operation of law. OAR 438-012-0090(3). Consequently, as a matter of law, the denied new medical condition ("right knee medial meniscus tear") is not compensable.²

¹ ALJ Spangler also set aside SAIF's denial regarding claimant's occupational disease claim.

² SAIF initially issued a "Notice of Incomplete Claim" regarding a "post-aggravation rights" new medical condition ("right knee medial meniscus tear"). Inasmuch as ALJ Spangler issued a "Proposed and Final Own Motion Order," we conclude that this prior procedural bar to the claim was eliminated and

In light of such circumstances, we are not authorized to reopen the claim for the “post-aggravation rights” new medical condition (“right knee medial meniscus tear”). Accordingly, the request for claim reopening for a “post-aggravation rights” new medical condition under ORS 656.278(1)(a) (2001) is denied.

IT IS SO ORDERED.

Entered at Salem, Oregon on October 15, 2004

that the parties proceeded to litigate the compensability of the “post-aggravation rights” new medical condition.